



STATE OF UTAH

JON M. HUNTSMAN, JR.
GOVERNOR

OFFICE OF THE GOVERNOR
SALT LAKE CITY, UTAH
84114-2220

GARY R. HERBERT
LIEUTENANT GOVERNOR

March 21, 2006

The Honorable Greg J. Curtis
Speaker of the House
and
The Honorable John L. Valentine
President of the Senate

Dear Speaker Curtis and President Valentine:

After careful consideration and study, I have decided to veto H.B. 100, ENVIRONMENTAL LITIGATION BOND, and have transmitted it to the Lieutenant Governor for filing.

This bill seeks to impose new requirements on Utah corporations that initiate lawsuits under the National Environmental Policy Act of 1969, the Atomic Energy Act of 1964, or any of the twenty other federal environmental statutes referenced in the bill. Specifically, it provides that any Utah corporation filing a federal environmental action and "requesting a stay or injunction to a new permit or approval" must "post a corporate surety bond or cash equivalent" in an "amount that will cover the payment of reasonably foreseeable costs and damages suffered in Utah by any person because of the delay caused by the environmental litigation." H.B. 100 at 3 ln. 67, 5 ln. 120-24 (General Session 2006). The amount of the bond would have to be sufficient to cover everything from "employees' lost wages, salaries, and benefits" to "lost net revenue, including local and state tax revenues." *Id.* at 5 ln. 125-26. Any Utah corporation failing to post such a bond upon initiating litigation covered by the bill would be subject to administrative dissolution and other penalties. *See id.* at 5 ln. 139-46.

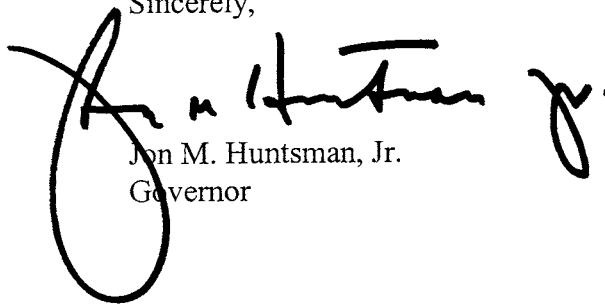
I have great respect for the sponsors and proponents of H.B. 100, and admire their sincere desire to make our State a better place. Nevertheless, consistent with my oath to "support, obey and defend the Constitution of the United States and the Constitution of this State," Utah Const. art. IV, § 10, I cannot sign this bill into law. The Supremacy Clause of the U.S. Constitution provides that laws enacted by Congress "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding." U.S. Const. art. VI, § 2. An analogous clause in our State

Constitution similarly provides that "Utah is an inseparable part of the Federal Union and the Constitution of the United States is the supreme law of the land." Utah Const. art. I, § 3. These provisions make clear that, where a properly enacted federal law conflicts with a State law, the federal law necessarily preempts its State counterpart.

H.B. 100 conflicts with federal law inasmuch as it seeks to impose additional requirements — *i.e.*, bonding requirements that are not imposed by, and are inconsistent with, federal law — on Utah corporations seeking injunctive relief under federal environmental statutes. By so doing, the bill threatens to "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Comm'n*, 461 U.S. 190, 204 (1983) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

For the foregoing reasons, I consider this bill preempted by federal law, and therefore cannot allow it to take effect.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon M. Huntsman Jr.", with a large, stylized loop at the end.

Jon M. Huntsman, Jr.
Governor